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QUESTION OF THE HUMAN RIGHTS OF ALL PERSONS SUBJECTED TO ANY FORM OF DETENTION OR IMPRISONMENT

Written statement submitted by the Robert F. Kennedy Memorial Center for Human Rights, a non-governmental organization in consultative status (category II)

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1296 (XLIV).

[8 April 1996]

National security laws and human rights

1. At the 1993 World Conference on Human Rights more than 85 non-governmental organizations adopted a resolution expressing concern that many States use legislation purporting to protect national security as an instrument for limiting internationally recognized human rights, particularly the right to freedom of expression, association and religion. Since then, the Robert F. Kennedy Memorial Center for Human Rights has brought to the Commission's attention the problem of human rights violations, including arbitrary detention, that are carried out under the veneer of legality that national security legislation provides.

2. The RFK Center welcomes the finding of the Special Rapporteur on states of emergency that ordinary, permanent laws of this type are "a misuse of law", which "is particularly serious when it takes the form of criminal laws or procedures applicable under normal circumstances" (E/CN.4/Sub.2/1994/23, para. 39). The Siracusa Principles and the recent Johannesburg Principles on National Security, Freedom of Expression and Access to Information have made valuable contributions. Nevertheless, the need remains for mechanisms that can apply these principles effectively to ensure that Governments cannot use the pretext of national security to violate internationally protected rights. In November 1995, representatives of NGOs met in Seoul at the International Conference on National Security Laws in the Asia Pacific; they analysed this issue and called for international action to address it. Despite these initiatives, violations under authority of national security legislation persist.

China and Tibet

3. In China and Tibet, national security laws are used to prosecute human rights activists for "counterrevolutionary activities" or "leaking State secrets". Writing or speaking words that are deemed "harmful to State security" may lead to charges of "sabotage" against the State. While the Constitution provides for freedom of peaceful assembly and association, it also stipulates that such activities cannot interfere with the "interests of the State".

4. Last May, dozens of activists were imprisoned for issuing petitions calling for tolerance of dissent, an end to the imprisonment of writers and activists, a reassessment of the events of 4 June 1989, and the establishment of democracy and the rule of law. Some, including Wang Dan and Liu Nianchun, remain in incommunicado detention, their whereabouts unknown.

5. In November 1995, human rights advocate and Robert Kennedy Human Rights Award laureate Wei Jingsheng was formally arrested for "conducting activities in [an] attempt to overthrow the Chinese Government". Wei had been detained without charge, his whereabouts unknown, since April 1994. Following his five-hour trial, Wei was convicted and sentenced to 14 years in prison plus 3 years' deprivation of political rights. The charges against Wei were based solely on his exercise of internationally recognized rights to freedom of expression and association.

6. In Tibet, new national security laws that target persons engaged in "splittist" (nationalist) activities have been used to arrest and detain individuals solely for their peaceful expression of support for independence. During the first three months of 1995, authorities arrested 123 people, including 68 monks and 50 nuns, in connection with peaceful pro-independence activities - more political arrests than during all of 1994. At the end of the year, more than 600 Tibetans were known to be in political detention.

Indonesia

7. Indonesia's Anti-Subversion Law of 1963, which carries a possible death sentence for some offences, is still used to prosecute people for "deviating from the State ideology" or "arousing hostility, disturbances or anxiety among

the population". At least 250 people are currently serving sentences under this law. The "hate-sowing articles" - laws that criminalize acts such as "expressing hatred toward the Government" and "insulting the President" - have been used against journalists, human rights activists and academics to silence criticism. In 1995, three journalists and an office clerk were arrested and convicted under these laws. A member of Parliament was recalled from office and is being tried for "defaming the President".

8. Dozens of advocates for non-violent political reform from East Timor and Irian Jaya are serving lengthy prison terms for "subversive activities". East Timorese activists who helped organize a 1991 peaceful procession in Dili, in which the military killed more than 200 persons, remain in prison under charges of "subversion".

9. In Irian Jaya, the Anti-Subversion law has been used to jail peaceful proponents of independence, such as Thomas Wainggai, who died recently while serving a 20-year sentence for subversion for organizing a peaceful ceremony and issuing a proclamation calling for independence. More than 30 of some 100 people arrested after recent disturbances in Irian Jaya remain in detention, not yet charged with any crime.

Republic of Korea

10. The Government of the Republic of Korea has taken steps to improve the human rights situation, and some higher court judges have exhibited increased independence. However, more than 200 dissidents were arrested in 1995 under the National Security Law (NSL). In March 1995, Professor Kim Mu Yong was arrested under a provision of the NSL for writing publications about the Korean guerrilla movement of the 1940s and 1950s. Social science researcher Lee Chan-haeng was arrested last October, apparently for the content of his two books that allegedly "praise" the People's Democratic Republic of Korea. Twelve university students were detained for forming an organization that the authorities alleged would have "benefited" the People's Democratic Republic of Korea.

11. The United Nations Human Rights Committee has deemed the NSL "a major obstacle to the full realization of the rights enshrined in the International Covenant on Civil and Political Rights". The NSL is used to limit freedom of expression and association. It criminalizes any activity deemed by the authorities to show sympathy for the People's Democratic Republic of Korea. While the Republic of Korea has legitimate security concerns, its use of the NSL to punish non-violent political dissent and other protected activity represents an unlawful limitation of those rights.

Viet Nam

12. While the Vietnamese Government has taken unprecedented steps to open diplomatic channels and diversify its economy, human rights violations persist. Viet Nam's Constitution and Criminal Code contain broad national security provisions that are used to prosecute and jail those who use peaceful means to organize for democratic reform. Charges of "attempting to overthrow the Government", disseminating "antirevolutionary propaganda", "abusing the

rights of freedom and democracy to damage national security" and "causing divisions" between the Communist Party and various social sectors are based on acts of peaceful expression or association.

13. During 1995, several members of the Unified Buddhist Church were convicted of national security offences; they had organized flood relief and expressed concerns related to religious persecution. Nine members of the "Movement to Unite the People and Build Democracy", a group advocating peaceful political change, were convicted after trying to organize a conference on development and democracy. Nguyen Dinh Huy, the group's leader, was given a 15-year sentence for "attempting to overthrow the Government".

14. RFK Human Rights Award laureates Dr. Nguyen Dan Que and Professor Doan Viet Hoat remain in prison on charges of conducting "activities aimed at overthrowing the people's Government". Charges were based on involvement in publications and organizations that urged respect for human rights and political reform. They are among hundreds of Vietnamese imprisoned for political offences.

Kenya

15. With general elections scheduled for 1997, the Kenyan Government is using repressive laws against "sedition", "incitement" and "holding illegal meetings" to detain, prosecute and harass human rights activists, journalists and opposition politicians. The Preservation of Public Security Act allows the Government to detain non-violent critics indefinitely without charges or trial. The President exercises strict control over the judiciary and has reportedly stated that the Government's policies could not be interfered with by the courts.

16. During 1995, nine opposition members of Parliament were arrested and officially charged with "sedition". Libel and sedition laws are used to detain and prosecute journalists. During 1994 and 1995, more than 20 journalists were harassed, fined or imprisoned for criticizing the Government. In April, a printer of an independent magazine was arrested and charged with "printing a seditious publication" in connection with articles critical of a Government minister. The following month, the editor of the same magazine was arrested and charged with "sedition".

Israel and the Palestinian Autonomous Areas

17. While Israel can and must take all appropriate steps to prevent violence against its citizens, its recent mass arrests of Palestinians and reported mistreatment of detainees violate international law. Under pressure from Israel and the United States to do more to protect Israel's security, the Palestinian Authority established a State security court in 1995. This court's procedures - trials without notice, at night, in undisclosed locations - fall far short of international standards. In response to the recent suicide bombings in Israel, the Palestinian Authority has arrested some 700 suspected supporters of Hamas and Islamic Jihad, mostly without warrant, and trials in the State security court have continued.

18. Under the authority of national security legislation, people in many countries, especially human rights advocates and critics of Government abuses, are detained indefinitely, interrogated under abusive conditions and subjected to legal proceedings that do not meet international standards. Even when unenforced, these laws inhibit the free expression and association that are essential to a society that respects human rights.

19. The Robert F. Kennedy Center for Human Rights again urges the Commission to address this widespread problem. We urge the Commission to adopt the recommendation of the Special Rapporteur on states of emergency that this issue be considered in depth. We ask that the Commission call on the Sub-Commission to undertake a study to expose and identify the effects of national security and related laws on the exercise of basic rights and to delineate more clearly the circumstances that constitute legitimate threats to national security for purposes of invoking exceptions to human rights principles. We further call on the Commission to establish a special rapporteur on human rights and national security laws, or, at a minimum, to provide that all special procedures include consideration of this issue.